

Assembly Bill No. 1160

Passed the Assembly September 10, 2009

Chief Clerk of the Assembly

Passed the Senate September 8, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 1632.5 to the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, Fong. Contracts: translation.

Existing law requires a person in a trade or business who negotiates specified contracts or agreements primarily in the languages of Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver to the other party, prior to execution of the contract or agreement, a translation of the contract or agreement in the applicable foreign language, except as specified. Under existing law, failure to comply with these provisions entitles the aggrieved party to rescind the contract or agreement. Under existing law, these provisions apply to specified loans or extensions of credit subject to the Industrial Loan Law and the California Finance Lenders Law.

This bill would, in the alternative, require a supervised financial organization, as defined, that negotiates primarily in one of those languages in the course of entering into a contract or agreement for a loan or extension of credit secured by residential real property, to deliver, prior to the execution of the contract or agreement, and no later than 3 business days after receiving the written application, a specified form in that language summarizing the terms of the contract or agreement, as specified. The bill would provide that a supervised financial organization that complies with these provisions would be deemed to be in compliance with the translation requirement in existing law described above. The bill would also provide that a supervised financial organization that complies with the translation requirement in existing law would be in compliance with these provisions. The bill would provide for administrative penalties against specified licensed persons for violations of these provisions. The bill would require the Department of Corporations and the Department of Financial Institutions to create a new form for these purposes, as provided, and to make it available in each of the languages described above.

The bill would authorize an action against a supervised financial organization for a violation of these provisions to be brought only by a licensing agency or by the Attorney General.

These provisions would become operative beginning on July 1, 2010, or 90 days after issuance of a form as provided, whichever occurs later.

The provisions of this bill would not affect the obligations of a real estate broker, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1632.5 is added to the Civil Code, to read:

1632.5. (a) A supervised financial organization that negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, whether orally or in writing, in the course of entering into a contract or agreement for a loan or extension of credit secured by residential real property, shall deliver to the other party to that contract or agreement prior to the execution of the contract or agreement the form described in subdivision (i) for that language.

(b) For purposes of this section:

(1) “Contract” or “agreement” shall have the same meaning as defined in subdivision (g) of Section 1632.

(2) “Supervised financial organization” means a bank, savings association, as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or any person subject to Division 7 (commencing with Section 18000), Division 9 (commencing with Section 22000), or Division 20 (commencing with Section 50000) of the Financial Code.

(c) (1) With respect to a contract or agreement for a loan or extension of credit secured by residential real property as described in subdivision (a), a supervised financial organization that complies with this section shall be deemed in compliance with Section 1632.

(2) A supervised financial organization that complies with Section 1632, with respect to a contract or agreement for a loan or extension of credit secured by residential real property as described in subdivision (a), shall be deemed in compliance with this section.

(d) The supervised financial organization shall provide the form described in subdivision (i) to the borrower no later than three

business days after receipt of the written application, and if any of the loan terms summarized materially change after provision of the translated form but prior to consummation of the loan, the supervised financial organization shall provide an updated version of the translated form prior to consummation of the loan.

(e) (1) This section does not apply to a supervised financial organization that negotiates primarily in a language other than English, as described by subdivision (a), if the party with whom the supervised financial organization is negotiating, negotiates the terms of the contract through his or her own interpreter.

(2) For purposes of this subdivision, “his or her own interpreter” means a person, not a minor, able to speak fluently and read with full understanding both the English language and one of the languages specified in subdivision (a) that is the language in which the contract was negotiated, who is not employed by, and whose services are not made available through, the person engaged in the trade or business.

(f) Notwithstanding subdivision (a), a translated form may retain any of the following elements of the executed English language contract or agreement without translation:

(1) Names and titles of individuals and other persons.

(2) Addresses, brand names, trade names, trademarks, or registered service marks.

(3) Full or abbreviated designations of the make and model of goods or services.

(4) Alphanumeric codes.

(5) Individual words or expressions having no generally accepted non-English translation.

(g) The terms of the contract or agreement which is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the form described in subdivision (i) and required by subdivision (a) shall be admissible in evidence only to show that no contract or agreement was entered into because of a substantial difference in the material terms and conditions of the contract or agreement and the prior translated form provided to the borrower.

(h) (1) A licensing agency may, by order, after appropriate notice and opportunity for hearing, levy administrative penalties against a supervised financial organization that violates any provision of this section, and the supervised financial organization

may be liable for administrative penalties, up to the amounts of two thousand five hundred dollars (\$2,500) for the first violation, five thousand dollars (\$5,000) for the second violation, and ten thousand dollars (\$10,000) for each subsequent violation. Except for licensing agencies exempt from the provisions of the Administrative Procedure Act, any hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the licensing agency shall have all the powers granted under that act.

(2) A licensing agency may exercise any and all authority and powers available to it under any other provisions of law to administer and enforce this section, including, but not limited to, investigating and examining the licensed person's books and records, and charging and collecting the reasonable costs for these activities. The licensing agency shall not charge a licensed person twice for the same service. Any civil, criminal, and administrative authority and remedies available to the licensing agency pursuant to its licensing law may be sought and employed in any combination deemed advisable by the licensing agency to enforce the provisions of this section.

(3) Any supervised financial organization that violates any provision of this section shall be deemed to have violated its licensing law.

(4) Nothing in this section shall be construed to impair or impede the Attorney General from bringing an action to enforce this division.

(i) The Department of Corporations and the Department of Financial Institutions shall create a form to be made available in each of the languages set forth in subdivision (a) for use by a supervised financial organization to summarize the terms of a mortgage loan pursuant to subdivision (a). In creating the form, the Department of Corporations and the Department of Financial Institutions may use as guidance the United States Department of Housing and Urban Development's Good Faith Estimate disclosure form.

(j) This section shall not apply to federally chartered banks, credit unions, savings banks, or thrifts.

(k) Except as otherwise provided in subdivision (h), this section shall not be construed to create or enhance any claim, right of

action, or civil liability that did not previously exist under state law, or limit any claim, right of action, or civil liability that otherwise exists under state law.

(l) An action against a supervised financial organization for a violation of this section may only be brought by a licensing agency or by the Attorney General.

(m) This section shall become operative beginning on July 1, 2010, or 90 days following the issuance of a form by both the Department of Corporations and the Department of Financial Institutions pursuant to subdivision (i), whichever occurs later.

SEC. 2. This act is not intended to affect the obligations of a real estate broker, as defined in Section 10131 of the Business and Professions Code, subject to Section 1632, or the remedies under Section 1632 applicable to real estate brokers who violate that section. Further, it is the intent of the Legislature that a supervised financial organization that is subject to both Section 1632 and this section, and who seeks to comply with this section, shall be subject to the remedies set forth in this section and not Section 1632.

Approved _____, 2009

Governor